

Message Text

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TAGS: CARR, TU
SUBJECT: PRISONER TRANSFER TREATY: NEGOTIATIONS

1. U.S. NEGOTIATING TEAM, LED BY DEPT. ASST. LEGAL
ADVISOR ROBERT DALTON, MET FOR THREE HOUR OPENING
SESSION AFTERNOON AUGUST 21 WITH TURKISH TEAM, HEADED
BY MFA DIRECTOR GENERAL CONSULAR AFFAIRS METIN
KUSTALOGLU. ALSO PRESENT ON TURKISH SIDE WERE:

MR.M?'R, CHIEF ADVISOR
GENERAL DIRECTORATE OF LAWS, RESEARCH AND PLANNING
AT THE MINISTRY OF JUSTICE.

MR. SELAHATTIN KEYMAN, ASSOCIATE PROFESSOR,
FACULTY OF LAW, UNIVERSITY OF ANKARA.

MR. UMIT AYTAZ, ACTING DIRECTOR OF THE DEPARTMENT OF
THE CONSULAR CONVENTIONS AT THE MINISTRY OF FOREIGN
AFFAIRS.

MR. BOZKURT SURAL, LEGAL ADVISOR AT THE MINISTRY
OF FOREIGN AFFAIRS.

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MR. SAMI GUNER, DIRECTOR OF SECTION AT THE DEPARTMENT
OF THE CONSULAR CONVENTIONS OF THE MINISTRY OF FOREIGN
AFFAIRS.

OTHER AMERICAN PARTICIPANTS WERE: MICHAEL ABBELL, DEPT
JUSTICE; DENNIS KUX, EMB POL COUNS; JOAN SMITH, EMB CONSOFF;
HAL COLLUMS, EUR/SE. ATMOSPHERE THROUGHOUT SESSION WAS

CORDIAL AND BUSINESSLIKE.

2. DURING INTRODUCTORY REMARKS, KUSTALOGLU REITERATED TURKISH INTEREST IN UPDATING 1923 EXTRADITION TREATY AND CONCLUDING A CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS. IN RESPONSE, DALTON INDICATED U.S. SIDE WOULD TABLE DRAFT TEXTS AND WOULD BE WILLING TO BEGIN EXPLORATORY DISCUSSIONS ON THESE ADDITIONAL AGREEMENTS AFTER TURKS HAD HAD OPPORTUNITY TO REVIEW. MOREOVER, AS MENTIONED BY CA ASST SEC WATSON DURING HER AUGUST 10 MEETING WITH KUSTALOGLU IN WASHINGTON, U.S. ALSO PLANNED TO TABLE DRAFT BILATERAL CONSULAR TREATY. KUSTALOGLU NOTED THAT GOT WOULD BE HAPPY TO RECEIVE DRAFT CONSULAR TREATY FOR STUDY, SUBJECT TO NEGOTIATION IN THE FUTURE.

3. TURNING TO PRISONER TRANSFER TREATY, TWO SIDES AGREED TO WORK FROM TURKISH DRAFT AS BASIS (ANKARA 5810), REFERRING TO U.S. DRAFT AS NECESSARY. SUBSTANTIVE DISCUSSIONS QUICKLY FOCUSED ON TWO KEY POINTS AT ISSUE:
A. CONFISCATIONS AND DISQUALIFICATIONS. (ARTICLE 2) READS: "DEPRIVATION OF LIBERTY, CONFISCATION, OTHER MEASURES OR DISQUALIFICATION." U.S. SIDE PROPOSED RESTRICTING LANGUAGE TO "DEPRIVATION OF LIBERTY" ONLY, NOTING DIFFICULTIES ENTAILED UNDER IMPLEMENTING LEGISLATION AND POTENTIAL PROBLEMS IN STATE-FEDERAL RELATIONS IF U.S. WERE TO TRY TO ENFORCE CONFISCATIONS OR DISQUALIFICATIONS LIMITED OFFICIAL USE

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IMPOSED BY TURKISH COURTS. ALSO, "OTHER MEASURES" WAS ENTIRELY TOO VAGUE. TURKISH SIDE, ON OTHER HAND, STRESSED THAT CONFISCATIONS AND DISQUALIFICATIONS WERE FREQUENTLY AN INTEGRAL PART OF SANCTION HANDED DOWN BY TURKISH COURT AND COULD NOT BE OMITTED WITHOUT VIOLATING INTEGRITY OF CRIMINAL JUDGMENT. HOWEVER, TURKS RECOGNIZED PROBLEMS CREATED BY U.S. DOMESTIC LAW AND POINTED TO SAVING CLAUSE LANGUAGE IN ARTICLES 29 AND 31 AS PERHAPS PROVIDING WAY AROUND PROBLEM. TWO SIDES AGREED TO COME BACK TO THIS POINT NEXT MORNING. TURKS AGREED "OTHER MEASURES" WAS TOO BROAD, AND CONCURRED WITH SUBSTITUTION OF "SPECIAL MEASURES OF SUPERVISION", E.G., RESTRICTION OF "SPECIAL MEASURES OF SUPERVISION", E.G., RESTRICTIONS ON PERSON'S FREEDOM OF MOVEMENT AFTER COMPLETION OF IMPRISONMENT PHASE OF SENTENCE.
B. SUBSTITUTED SENTENCING PROVISIONS. (ARTICLE 23 AND FOLLOWING). TURKISH SIDE PRESSED FOR INCLUSION OF SUBSTITUTED SENTENCING PROVISIONS, WHEREBY COURT IN REQUESTED (RECEIVING) STATE MUST HOLD NEW PROCEEDING AND RENDER DECISION TO ENFORCE SANCTION IMPOSED BY REQUESTING (SENDING) STATE. U.S. SIDE RESPONDED THAT THIS WOULD CAUSE FUNDAMENTAL PROBLEMS FROM STANDPOINT OF U.S. LEGAL

SYSTEM, BECAUSE U.S. FEDERAL COURTS PRESENTLY HAVE NO REPEAT NO BASIS TO EXERCISE JURISDICTION OVER SUCH CASES. INSTEAD, U.S. PROPOSED STRAIGHT FORWARD UNDERTAKING TO ENFORCE SANCTION AS IMPOSED BY TURKISH COURTS, SUBJECT TO U.S. PAROLE LAWS AS IN MEXICAN, BOLIVIAN AND CANADIAN TREATIES. UNDER PROPOSED TREATY, WHICH REQUIRES PRISONER'S CONSENT BEFORE TRANSFER COULD TAKE PLACE, U.S. FELT NEW PROCEEDING IN COURT OF RECEIVING STATE WAS UNNECESSARY. TURKISH SIDE EXPRESSED RESERVATIONS RE U.S. APPROACH, INDICATING THAT TURKISH CONSTITUTION MAY REQUIRE SUCH DECISION BY TURKISH COURT BEFORE IT COULD ENFORCE SANCTION IMPOSED BY U.S. COURT ON TURKISH NATIONAL. TWO SIDES AGREED TO COME BACK TO THIS POINT IN MORNING.

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4. DESPITE DIFFERENCES OF APPROACH ON KEY POINTS OF SUBSTANCE, TWO SIDES CONDUCTED TALKS IN FRIENDLY, PROFESSIONAL MANNER. TURKS' FUNDAMENTAL CONCERN APPEARED TO BE THAT AMERICAN PRISONERS TRANSFERRED BACK TO US UNDER TREATY MIGHT BE RELEASED MORE OR LESS IMMEDIATELY UNDER CIRCUMSTANCES WHICH IMPLIED THAT THEIR CONVICTIONS BY TURKISH COURT WERE SOMEHOW SUSPECT. HOWEVER, BOTH SIDES APPEARED DESIROUS OF WORKING OUT DIFFERENCES AND REACHING AGREEMENT ON TEXT AS SOON AS POSSIBLE. FULL SECOND DAY OF TALKS PLANNED FOR AUGUST 22.
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